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R e m a r k s

Claims 1-22 are pending in the application.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by H. Schulzrinne et al. IETF RFC 3550 "RTP: A Transport Protocol for Real-time Applications," July, 2003 (hereinafter "RFC 3550").

Claims 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Elliott et al. (US 20040022237, hereinafter "Elliott").

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFC 3550.

Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFC 3550 in view of Elliott.

Claims 19-20 (22?) are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent

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form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewriting to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

Rejection Under 35 U.S.C. 102

Claims 1-9

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by RFC 3550. The rejection is traversed.

Applicants note that the effective filing date of Applicants' application is September 9, 2003 and that the publication date of RFC 3550 is July, 2003. Accordingly, since RFC 3550 was not published more than one year before the filing date of Applicants' application, Applicants submit that RFC 3550 is not a proper reference under 35 U.S.C. 102(b).

RFC 3550 discloses the Real-Time Transport Protocol (RTP). Specifically, RTP discloses message formats, header fields, session multiplexing, and other specifics of the RTP. Additionally, RFC 3550 discloses details of the RTP Control Protocol (RTCP), such as packet formats, packet send and receive rules, and other specifics of the RTCP.

RFC 3550 however, fails to teach or suggest each and every limitation of Applicants' claim 1. Namely, RFC 3550 fails to teach or suggest at least the limitation of "accepting a new call into the IP network in the case of said parameter not exceeding an upper threshold," as claimed in Applicants' claim 1.

Rather, although RFC 3550 discloses a packet loss ratio and RTCP sender and receiver reports, RFC 3550 is devoid of any teaching or suggestion of how a new call is accepted into an IP network, much less that a new call is accepted into the IP network where a parameter associated with quality of service of voice calls does not exceed an upper threshold, as claimed in Applicants' claim 1. RFC 3550 is devoid of any teaching

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or suggestion of any threshold comparisons. As such, RFC 3550 fails to teach or suggest accepting a new call into the IP network in the case of said parameter not exceeding an upper threshold.

Furthermore, with respect to Applicants' limitation of "accepting a new call into the IP network in the case of said parameter not exceeding an upper threshold," the Examiner asserts that "packet loss is related to congestion, which in turn inherently implies that [a] new call should be accepted if congestion is manageable." (Office Action, Pg. 2 – 3). Applicants respectfully disagree.

In order for a missing element to be inherent, "extrinsic evidence must make clear that the missing descriptive matter is <u>necessarily present</u> in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. The mere fact that a certain thing <u>may</u> result from a given set of circumstances <u>is not sufficient</u>." In re Robertson, 49USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (internal quotations omitted) (emphasis added).

RFC 3550 does not inherently teach Applicants' invention as recited in claim 1 since the teachings of RFC 3550 do not <u>necessarily</u> include accepting a new call into the IP network in the case of a parameter not exceeding an upper threshold. Applicants note that although packet loss <u>may be</u> related to congestion, packet loss is not <u>necessarily</u> related to congestion at least because packet loss can be caused by various other conditions. Applicants further note that the fact that packet loss <u>may be</u> related to congestion in no way teaches or suggests anything having to do with whether or not a new call is accepted into a network. Furthermore, although congestion manageability <u>may be</u> related to call acceptance, congestion manageability is not <u>necessarily</u> related to call acceptance because congestion manageability may be related to various other actions and call acceptance may be conditioned on various other factors.

Thus, the Examiner's inherency argument deals in probabilities and possibilities, which are insufficient to establish such inherency. <u>Robertson</u>, 49 USPQ2d at 1950. Furthermore, even assuming that a congestion indicator provides an indication as to the manageability of congestion (which Applicants maintain it does not), such an indication would still fail to teach or suggest accepting a new call into an IP network in the case of a parameter not exceeding an upper threshold. As such, RFC 3550 fails to explicitly or

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even inherently teach or suggest at least the limitation of "accepting a new call into the IP network in the case of said parameter not exceeding an upper threshold," as claimed in Applicants' claim 1.

Anticipation requires, in a single prior art reference, disclosure of each and every element of the claimed invention, arranged as in the claim. The RFC 3550 reference fails to disclose each and every element of the claimed invention, as arranged in independent claim 1.

As such, independent claim 1 is not anticipated by RFC 3550 and is patentable under 35 U.S.C. 102. Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over RFC 3550.

Therefore, the rejection should be withdrawn.

Claims 14-18

Claims 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Elliott et al. (US 2004/0022237, hereinafter "Elliott"). The rejection is traversed.

Elliott discloses an architecture for communicating voice and data over a packet-switched network. Specifically, Elliott discloses that the architecture includes soft switch sites, a data network, a provisioning component, a network event component, and a network management component. (Elliott, Abstract).

Elliott, however, fails to disclose each and every element of the claimed invention, as arranged in independent claim 14. Namely, Elliott fails to teach or suggest at least the limitation of "a third circuit for processing the polled information to determine whether the voice call data is to be accepted by the internet protocol network," as claimed in Applicants' claim 14.

Rather, Elliott discloses a soft switch that manages gateway sites that originate and terminate calls though the data network. Specifically, Elliott discloses a call flow method in which soft switch sites instruct gateway sites to make connections to set up a call. (Elliott, Para. 0483 - 0518). However, although Elliott discloses call setup and teardown signaling, and conversion of PSTN traffic to packet-based traffic for

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transmission over the data network, Elliott is devoid of any teaching or suggestion of a gateway including the three circuits claimed in Applicants' claim 14. Specifically, Elliott fails to teach or suggest at least the limitation of "a third circuit for processing the polled information to determine whether the voice call data is to be accepted by the internet protocol network," as claimed in Applicants' claim 14.

Furthermore, in the Office Action, the Examiner cites specific portions of Elliott, asserting that the cited portions of Elliott disclose the apparatus of Applicants' claim 14. Specifically, the Examiner cites Ethernet switch 332 of Figure 3 of Elliott as teaching Applicants' first circuit and cites the CPU Card of Soft Switch 204 of Figure 2B as teaching Applicants' second and third circuits. (Office Action, Pg. 4 – 5). Applicants respectfully note, however, that the Ethernet switch 332 and Soft Switch 204 of Elliott are not an apparatus. Rather, Ethernet switch 332 and Soft Switch 204 are separate apparatuses in communication via communication links. Specifically, Elliott states that "[s]oft switches 204a, 204b and 204c are connected to SS7 GWs 208, 210, CS/CDBs 206a, 206b and RSs 212a, 212b via redundant ethernet switches (ESs) 332, 334 having multiple redundant paths." (Elliott, Para. 0568). Thus, the portions of Elliott relied upon by the Examiner do not teach an apparatus comprising a gateway, where the gateway comprises the three circuits claimed in Applicants' claim 14. Thus, the cited portion of Elliott fails to teach or suggest each and every element of Applicants' claim 14, as arranged in the claim.

As such, independent claim 14 is not anticipated by Elliott and is patentable under 35 U.S.C. 102. Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Elliott.

Therefore, the rejection should be withdrawn.

Rejection Under 35 U.S.C. 103(a)

Claims 10 and 12

Claims 10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFC 3550. The rejection is traversed.

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Each of these grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 102 given RFC 3550. Since the rejection under 35 U.S.C. 102 given RFC 3550 has been overcome, as described hereinabove, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

Claims 11 and 13

Claims 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over RFC 3550 in view of Elliott. The rejection is traversed.

Each of these grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 102 given RFC 3550. Since the rejection under 35 U.S.C. 102 given RFC 3550 has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Elliott supplies that which is missing from RFC 3550 to render the independent claims anticipated, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

Claims 19-22

Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elliott. The rejection is traversed.

Each of these grounds of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 102 given Elliott. Since the rejection under 35 U.S.C. 102 given Elliott has been overcome, as described hereinabove, these grounds of rejection cannot be maintained.

Therefore, the rejection should be withdrawn.

Secondary References

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed

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discussion of the secondary references is not necessary for a full and complete response
to this Office Action.

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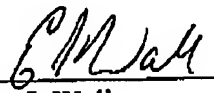
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Conclusion

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon Wall at (732) 530-9404 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

Dated: _8/9/07_

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